

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSE ISMAEL RUIZ ZUNIGA,)
)
 Petitioner,)
)
 v.) 1:15CV293
)
 FRANK L. PERRY,)
)
 Respondent.)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody, together with an application to proceed *in forma pauperis*. However, Petitioner already filed one habeas petition which is pending in this Court at this time. [No. 1:15CV35.] Petitioner may not file an additional habeas petition regarding the same convictions. The proper course of action is to file a motion to amend the pending petition if Petitioner wishes to add claims and receive permission to do so from the Court.

Because of this pleading failure, the Petition should be filed and then dismissed, without prejudice to Petitioner moving to amend his pending habeas petition in case 1:15CV35.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner moving to amend his pending habeas petition in case 1:15CV35.

This, the 13th day of April, 2015.



Joe L. Webster
United States Magistrate Judge